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BY AUTHORITY.

RESOLUTION NO. 398.

Be it resolved by the Board of Supervisors of the City and County of Honolulu, Territory of Hawaii, that the following sums aggregating One Hundred Forty-six Thousand Four Hundred Fifty and 00/100 (\$146,450.00) Dollars, be and the same is hereby appropriated out of all moneys in the School Fund in the Treasury of the said City and County of Honolulu, for the following purposes, to wit:

New buildings:
High school \$ 3,500.00
Kaneohe 750.00
Waiahole 750.00
Kaaawa 750.00
Kahuku 600.00
Pupukea 2,250.00
Kawailoa 600.00
Wailua 1,200.00
Wahiawa 600.00
Ewa 1,200.00
Waiapahu 1,200.00
Aiea 600.00
Kalihi-uka 600.00
Kaaumanu 30,000.00
Central Grammar 30,000.00
Honolulu District 9,600.00
Furniture and fixtures 15,000.00
Repairs and maintenance 26,250.00
Janitor service and supplies 21,000.00

Presented by
BEN HOLLINGER,
Supervisor.

Honolulu, January 6, 1916.
I hereby certify that the foregoing resolution passed First Reading and ordered to print at the meeting held on Thursday, January 6, 1916, on the following vote of the Board of Supervisors:

Ayes: Ahia, Arnold, Hollinger, Horner, Larsen, Logan, Shingle. Total 7.
Noes: None.

E. BUFFANDEAU,
Deputy City and County Clerk.
6365-Jan. 7, 8, 10.

NOTICE TO CREDITORS.

Estate of Sophie Hagen.
The undersigned, duly appointed administrator with the will annexed of the estate of Sophie Hagen, late of Honolulu, City and County of Honolulu, T. H., hereby gives notice to all persons having claims against said estate to present the same at his place of business, H. Hackfeld & Co., Ltd., within six months from date or they will be forever barred. All persons indebted to said estate are requested to make immediate settlement with the undersigned.

Dated Honolulu, T. H., January 7, 1916.

ALFRED C. HAGEN,
Administrator with the will annexed of the estate of Sophie Hagen, deceased.
6365-Jan. 7, 14, 21, 28, Feb. 4.

SHERIFF'S SALE NOTICE OF UNCLAIMED PROPERTY.

Under and by virtue of the authority in me vested by Ordinance No. 52, of the City and County of Honolulu, Territory of Hawaii, notice is hereby given that I, the undersigned, sheriff of the City and County of Honolulu, Territory aforesaid, will expose and offer for sale and public auction, at 12 o'clock, noon, of the 8th day of February, A. D. 1916, at the Police Station, Kakaiaua Hale, Honolulu, all unclaimed property below described, to the highest bidder therefor, unless the same shall be claimed with satisfactory proof of such ownership:

Property to be sold:
One opera glass, 2 umbrellas, 4 flashlights, 5 fountain pens, 1 clock, 11 assorted finger rings, 11 asstd. watches, 2 necklaces, 1 time stamp, 1 match box marked "J. K. K.", 1 nail clipper, 1 safety razor holder, 2 teeth in gold setting, 1 dog collar lock, 1 scout medal, 1 lot cuff links, 1 lot cuff buttons, 1 lot stick pins, 1 lot breast pins, 6 tie clasps, 1 kukui nut, 1 lot of watch chains, vanity boxes, nail polisher, breast pins, nail manicuring sets, and cigar lighter, 5 bracelets, 1 cigarette case, 2 prs. trousers, 9 coats, 1 cap, 1 sweater, 1 raincoat, 1 sheet, 2 prs. Japanese sandals, 2 hats, 1 undershirt, 1 shirt, 4 handkerchiefs, 3 scythes, 1 lot of bicycles, bicycle frames, wheels, handle-bars and seats, 1 roll of wire, 1 meat chopper, 1 dipper, 1 hatchet, 7 cast nets, 1 search-light, and 1 lot of empty bottles and demijohns.

Terms, cash.
Dated Honolulu, January 7, 1916.
CHARLES H. ROSE,
Sheriff, City and County of Honolulu.
6365-Jan. 7, 22, Feb. 7.

HIGH SHERIFF'S SALE NOTICE.

Under and by virtue of a certain Writ of Execution issued by the Honorable J. M. Monsarrat, District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of January, A. D. 1916, in the matter of Chong Ung, plaintiff, vs. Chung Kong, doing business as Kong Kee, and Lum Wai, defendants, for the sum of Two Hundred Sixteen and 18/100 (\$216.18) Dollars, I did, on the 6th day of January, A. D. 1916, levy upon and shall offer and expose for sale and sell at public auction to the highest bidder, so much of the property hereinafter referred to as may be necessary to satisfy the said Writ of Execution, at defendant's place of business on 433 N. Vineyard street, in Honolulu aforesaid, at 12 o'clock noon of Tuesday, the 8th day of February, A. D. 1916, all of the right, title and interest of the said defendant Chung Kong, doing business as Kong Kee, in and to the following personal property of the defendant, unless the sum due under said Writ of Execution, together with interest, costs and my fee and expenses are previously paid.

PROPERTY TO BE SOLD.
Fourteen tins salmon, 5 tins Chinese food stuff, 17 tins tomato sauce, 4 tins dried beef, 7 tins Carnation milk, 3 tins pork and beans, 6 tins milk, 1 Chinese scale, 1 duster, 1 lot matches and fireworks, 2 wall show cases and contents, 1 counter, 1 clock, 2 oil stoves, 5 pieces hardware, 28 lamp chimneys, 4 tins corn, 1 Alpine safe, 1 scale, 1 large snow case and contents, 1 small showcase, 1 kerosene boiler, 2 benches, 2 chairs, 1 ice chest, 1 box, 8 glass jars, 24 tins lye, 7 lamp stands.

RAPID TRANSIT RIGHT TO ISSUE STOCK IS UPHELD

(Continued from page one)

statement at present on that point.

The Rapid Transit attorneys gave notice that they would file the final decree some time next week. It will be from this decree that the territory will appeal the case, providing an appeal is taken.

Beginning his decision proper Judge Stuart says:

"The defendant claims that by an express provision of its franchise, it is entitled to issue stock for the full amount of the legitimate 'cost' of its plant and 25 per cent in addition thereto, and I find that the charter so reads. To illustrate, if this plant had actually 'cost' \$2,500,000, by the charter defendant may properly issue stock to that amount and 25 per cent in addition, or \$3,125,000, although the property may not be worth more at the present time than \$2,000,000. This is undoubtedly the reading of the defendant's franchise or charter. Plaintiff claims that stock should issue only to the value of the plant as it now stands, after deducting from its cost value all depreciation that may have arisen from any cause."

Assessed Value Quoted.

Judge Stuart goes on to say that the testimony of the tax assessor, and the books introduced in evidence, showed that the assessed value of the company's plant, which, in this territory, is "placed at the actual cash value of the property," was, at the time the case was commenced, \$2,139,710.

"If we add 25 per cent to this," the decision reads, "it gives us an authorized issue of stock of \$2,674,637."

Commenting on the testimony of William Barringer, a witness for the territory who spent three months ascertaining the value of the Rapid Transit plant, the decision says he found that the plant cost the company \$1,589,550.30. "But Barringer," the decision continues, "did not include everything which was later included in the stipulation, showing a cash outlay and 'cost' to the defendant of \$2,171,976.11. Add 25 per cent to this and we have an authorized stock issue of \$2,714,970.13."

The decision points out that J. M. Young, another engineer, fixed the cost and original value of the Rapid Transit plant at \$1,837,401.74. "But to this," it continues, "is to be added the tramways purchase and the Pearl Harbor traction extension, which again brings up the first cost to \$2,171,976.11, and by adding the 25 per cent we again have an authorized stock basis of \$2,714,970.13. Young finds a depreciation of \$983,571.11. This taken from \$2,714,970.13, leaves an authorized capital stock of \$1,731,459.02. Agreement is included."

At this juncture there is inserted in the decision the written agreement filed by the opposing attorneys, containing disputed and undisputed items regarding the cost and actual value of the Rapid Transit plant. The undisputed items amounted to \$568,919.43 and the undisputed items to \$1,603,056.58. Judge Stuart adds, by way of comment, that the investment by the Rapid Transit in both the old Hawaiian Tramways and the Pearl Harbor Traction Company "was fully authorized by the defendant's charter."

The Hawaiian Tramways Company, Judge Stuart finds, had the prior right to and was occupying the principal streets of the city. "These competing companies were continually at war," he continues, "in the legislature, the courts and elsewhere. Everyone saw the necessity of the settlement of these disputes not only for the benefit of the companies, but for the public benefit, and from the nature of the Rapid Transit charter, the purchase of the Hawaiian Tramways Company's rights and property by it seemed to be the only proper way of solving the difficulty."

The correspondence which Governor Pinkham had with certain interested parties prior to the purchase of the tramway by the Rapid Transit, which correspondence has been published in the Star-Bulletin, is commented upon at some length in the decision.

Pinkham's Advice Good.

"Mr. L. E. Pinkham, a public-spirited citizen," Judge Stuart says, "who was at that time also holding one of the territorial offices, under date of April 4, 1899, wrote the authorities of the Rapid Transit Company advising them to pay \$400,000 for the property and rights of the Tramways Company, and enclosed a letter from a learned friend of his engaged in street railway business, advising that the Rapid Transit Company should pay \$450,000 for the property. I think that Mr. Pinkham gave good advice and I believe that when the Rapid Transit Company finally bought the Tramways Company for \$255,549.94, that it made the best business investment it has made during its life. I have no hesitancy in holding that the stock, bonds and cash given in purchase of that property should be considered as a part of the legitimate 'cost' of its enterprise."

Grant and Limitation.

It was argued during the trial, Judge Stuart continues, that the charter providing for the 25 per cent increase is not a grant but a limitation. "I think it is both," the court adds, "that the plant itself should pass to the city at the end of the franchise right than as regards any other provision. The evidence in this case shows that the investment for many years was a

8 tins cleanser, 8 tins tomatoes, 3 tins peas, 1 lot sundry articles.
Terms cash in United States Gold Coin.
Dated at Honolulu, City and County of Honolulu, Territory of Hawaii, this 6th day of January, A. D. 1916.
PATRICK GLEASON,
Deputy High Sheriff, Territory of Hawaii.
6365-Jan. 7, 21, Feb. 7.



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very doubtful one to the stock subscribers. They were taking chances that many a prudent man would not feel like taking. The public was very "The defendant company has the right to issue stock and the amount of this stock is limited by the actual cost and the 25 per cent added thereto. No question is raised as to the right of the legislature to grant this 25 per cent in addition to the actual cost. Much may be said in favor of such a grant and much may be said against it, but I must take the grant as I find it."

The decision, in this respect, continues as follows:

"In fixing rates, the amount of stock issued is only one of the very many elements that may be considered in arriving at the true value of the plant at the time the rate is fixed. To illustrate, \$10,000 par value of stock may be issued in a given enterprise that is only worth in the market at the time of the fixing of the rates, \$2500. Really the two propositions have only a distant and uncertain relation to each other, if they have any dependable relation at all. It is on the value of the plant at the time of the fixing of the rates that rates are fixed; and what the plant may have cost has but little if any relation to this question."

On the other hand, the company is authorized to issue stock in this case to the amount that the plant legitimately cost with 25 per cent added, and that this may have but very little relation to the present value upon which rates might be fixed. In making extensions and certain improvements, the actual cost of these may properly be capitalized and stock issued to represent them."

Had Urged Accounting.

"But the plaintiff says a large part of this money came from the earnings of the system in which the territory was to share upon a certain basis, defined by the charter. This may be true; and it was for this reason that the court has time and again suggested an amendment to the pleadings, so that a full accounting might be taken, but the plaintiff has steadily refused to amend, and the court has been reminded several times by the parties that there was but one question before it to try, namely, whether or not the stock could be increased to \$1,600,000, as being within the legitimate cost of the plant."

The decision at this point quotes in full, section 17 of the Rapid Transit's franchise, granted by the legislature and approved by the president, relating to charges upon earnings.

"But I have nothing to do about this provision under the pleadings in this case," says Judge Stuart. "If there is a surplus left after providing for all of the expenditures down to division four of the section, then this surplus is to be applied by division four as follows: The excess of income shall be divided equally between the government of the Republic of Hawaii and the stockholders of said corporation." The use of the word "stockholders" seems singular and it may be quite significant. They have been fully provided for before by lawful dividends on their stock."

Franchise Unfair?

In some respects, says Judge Stuart it may be that the company's franchise is very unfair.

"I think," he says, "that this could be more properly claimed in reference to the provision for the redemption of the capital stock without providing

desirous of this road and it has proved of great public benefit. In truth, the franchise use of the streets was of no particular value to the public and may have been fully compensated for by upkeep of the streets and the building up of the city by the system that has been constructed.

Has Made no Claim.

"It should be added here that, although the company has made its regular quarterly reports to the territory as provided for in section 17, the territory has at no time claimed that any amount was due to it from the earnings of said road."

"Under the common law pertaining to corporations, they may not part with their stock without proper consideration or by way of stock dividends or give it away. But this question can be raised only by those who may be injuriously affected by such a fact or perhaps by the government—the parent of the corporation—in a direct proceeding for the purpose of correcting the wrong-doing of its child."

The decision takes up at some length the testimony introduced by both sides regarding the depreciation in the company's plant since its installation.

"There is nothing material by way of obsolescence," the decision says, "that detracts from its original value. Careful examination of the power plant shows that repairs (not particularly needed at this time) to the amount of \$2500 would make it as good as new. I do not think that the actual depreciation in the plant is anywhere near the amount allowed by the defendant. The court holds, however, that under the franchise and charter the defendant was and is authorized to issue stock to the actual 'cost' value of its property and 25 per cent thereof in addition thereto."

Pinkham Is Quoted.

Following this portion there is made as a part of the decision excerpts of statements by Governor Pinkham, made when the act of the legislature of 1913 was being considered in Congress on December 14, 1915, by a committee. The governor made the statement that he approved of the bill "so far as I have been able to analyze it," and that "I do not say that I have gone into it in a way that I might, and be responsible for it like Governor Frear; but there is no reason why I should doubt his wisdom in the matter."

Judge Stuart comments:

"The bill under consideration provided for the issuance of stock to the amount of \$1,600,000 and it surely contains safeguards to the public that it did not have by the original act. I see no reason to doubt the good judgment of Governor Pinkham in this instance in approving of this \$1,600,000 of stock any more than I have not doubted his judgment in a prior instance, in the purchase of the Hawaiian Tramways. Under any view that may be taken, I find that the defendant has the right to issue stock to the amount of \$1,600,000."

In the closing paragraph of the decision, Judge Stuart dissolves the injunction and dismisses the case on its merits.

The attorneys for the Rapid Transit were the law firms of Castle & Withington, and Frear, Prosser, Anderson & Marx. Attorney-general Stainback and Attorney C. H. Olson represented the territory.

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I, RICHARD H. TRENT, president of the TRENT TRUST COMPANY, LTD., and secretary of the MUTUAL BUILDING AND LOAN SOCIETY OF HAWAII, LIMITED, do solemnly swear that the foregoing statements are true to the best of my knowledge and belief.

RICHARD H. TRENT.
Subscribed and sworn to before me this 7th day of January, A. D. 1916.
(SEAL) **A. C. FRANCA,**
Notary Public, First Judicial Circuit, Territory of Hawaii.

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